

MT LEGISLATIVE HISTORY

Chapter 637 19 87

Bill H (S) 360

Original bill & hist. ✓C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) MAR 18 ✓C

Hearing Date(s) FEB 19 ✓C

MAR 20 ✓C

 C

 C

 C

 C

 C

Date Out MAR 20 ✓C

FEB 19 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE BILL NO. 360
INTRODUCED BY BISHOP, SPAETH

IN THE SENATE

FEBRUARY 17, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 20, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 21, 1987	PRINTING REPORT.
FEBRUARY 23, 1987	SECOND READING, DO PASS.
FEBRUARY 24, 1987	ENGROSSING REPORT.
FEBRUARY 25, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 20, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 7, 1987

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 14, 1987

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1987

CONFERENCE COMMITTEE REPORTED.

APRIL 17, 1987

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 20, 1987

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 21, 1987

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 21, 1987

SENT TO ENROLLING.

1 Senate BILL NO. 360
 2 INTRODUCED BY Bishop Spauld

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE NOTICE
 5 REQUIREMENTS CONCERNING A SUPPLIER'S RIGHT OF ACTION ON A
 6 BOND UNDER A PUBLIC CONSTRUCTION CONTRACT; AMENDING SECTION
 7 18-2-206, MCA; AND PROVIDING AN APPLICABILITY DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 18-2-206, MCA, is amended to read:

11 "18-2-206. Notice to contractor concerning
 12 subcontractor. (1) Every person, firm, or corporation
 13 furnishing provender, provisions, materials, or supplies to
 14 be used in the construction, performance, carrying on,
 15 prosecution, or doing of any work for the state or any
 16 county, city, town, district, municipality, or other public
 17 body shall, not later than 30 days after the date of the
 18 first delivery of--such--provender,--material,--supplies,--or
 19 provisions to any subcontractor or agent of any person,
 20 firm, or corporation having a subcontract for the
 21 construction, performance, carrying on, prosecution or doing
 22 of such work, deliver-or--send--by--certified--mail--to--the
 23 contractor--a--notice--in--writing--stating-in-substance-and
 24 effect-that:

25 {a)--such-person,--firm,--or--corporation-has-commenced-to

1 deliver-provender,--provisions,--materials,--or--supplies--for
 2 use--thereon,--with--the--name-of-the-subcontractor-or-agent
 3 ordering-or-to-whom-the-same-is-furnished;--and

4 {b)--such-contractor-and-his-bond-will-be-held-for--the
 5 same give a notice of a right of action on the bond.

6 (2) {a) The notice must be delivered personally or
 7 sent by certified mail to the public body, the contractor,
 8 and the licensed surety company.

9 {b) The notice must be in writing and state:

10 {i) that it is a notice of a right of action on the
 11 bond;

12 {ii) that the person, firm, or corporation giving the
 13 notice has commenced to deliver provender, provisions,
 14 materials, or supplies;

15 {iii) the name of the subcontractor or agent who placed
 16 the order or to whom the provender, provisions, materials,
 17 or supplies were delivered; and

18 {iv) that the contractor and his bond will be held for
 19 the unpaid price if the supplier is not paid.

20 {2}{3) No suit or action shall may be maintained in
 21 any court against the contractor or his bond to recover for
 22 such provender, provisions, material, or supplies or any
 23 part thereof unless the provisions of this part have been
 24 complied with."

25 NEW SECTION. Section 2. Applicability. This act

LC 1583/01

1 applies to contracts made on and after October 1, 1987.

-End-

SECRETARY-CAROLYN LINDEN

BILL NO.	REFER DATE	HEARING DATE	CONSIDERATION DATE	COMMITTEE ACTION	REFERRER TO COMM	DATE OUT
SB0308	3/11	3/13/87	3/13/87	PASS AS AMENDED		3/13/87
TVEIT, LARRY J. ALLOW BLACKJACK IF AUTHORIZED BY VOTERS OF LICENSING JURISDICTION						
SB0318	2/11	2/16	2/16/87	DO PASS		2/16/87
JACOBSON, JUDY H. ALLOW SALE OF LIQUOR-FILLED CANDY						
SB0324	2/11	2/16	2/16/87; 2/18/87	ADVERSE REPORT		2/18/87
PINSONEAULT, R.J. (DICK) REQUIRE OUT-OF-STATE TRANSIENT RETAIL MERCHANT TO PAY \$25 LICENSE FEE						
SB0336	2/14	2/19	2/19/87	TABLED		TABLED 2/19/87
MANNING, RICHARD E. REVISE VIDEO POKER LICENSING LAW						
SB0341	2/14	2/19	2/19/87; 2/20/87	PASS AS AMENDED		2/20/87
KEATING, THOMAS F. REVISES THE EMPLOYMENT AGENCY ACT AND TRANSFERS FUNCTIONS TO COMMERCE DEPT.						
SB0358	2/17	2/19	2/19/87	DO PASS		2/19/87
NEUMAN, TED ENFORCEABILITY OF DISHONORED CHECK TO PREMISES OFFERING CARD GAMES						
SB0360	2/17	2/19	2/19/87	PASS AS AMENDED		2/19/87
BISHOP, AL NOTICE REQUIREMENTS FOR PUBLIC CONSTRUCTION SUPPLIER ON RIGHT AGAINST BOND						
SB0364	2/18	2/20	2/20/87	DO PASS		2/20/87
MANNING, RICHARD E. ALLOW SALE OF BEER IN GRANDSTAND OF FAIRGROUND OR PUBLIC SPORTS ARENA						
SB0372	2/18	2/20	2/20/87	PASS AS AMENDED		2/20/87
PINSONEAULT, R.J. (DICK) REVISE LEMON LAW PROCEDURES						
SB0374	2/18	2/20	2/19/87; 2/20/87	DO PASS		2/20/87
NEUMAN, TED BANKING BD. TO ISSUE CERT. WITHOUT HEARING WHEN BANK CLOSED, ASSETS MOVED						
SB0385	2/19	2/20	2/13/87; 2/19/87; 2/20/87	PASS AS AMENDED		2/20/87
WEEDING, CECIL DEFINING MEDICAL ASSISTANCE FACILITY						

as long as the private agency has done their service, they are entitled to the fee. That's all that part of the bill says, according to Sen. Keating. The private agency should receive their fee when it is warranted. However, if this section does turn out to be in violation of federal regulations he urged the committee to take it out of the bill, but the other parts of the bill are important, particularly the differentiation between application fee and the other fees that may be charged at the discretion of the agency. He emphasized the right of private contract. He also said it was not the job of the legislature to determine whether the fee is too high, too low or fair or unfair. That is a decision to be made by the two parties. This bill would allow the agencies some fair practices under the law, would allow them to function a little bit better, and it gives redress where it belongs - back in the county attorney's office. He referred to the amendment he had suggested in his original presentation regarding the word "placement" before the word "fee" throughout the bill.

The hearing was closed on SB 341.

CONSIDERATION OF SENATE BILL NO. 360: Sen. Al Bishop, Senate District 46, Billings, sponsor of the bill, said the bill would amend the notice requirements regarding a supplier's right of action on a bond under a public construction contract. It provides that, before a supplier of a subcontractor on a public contract who is not paid may sue on the bond that the prime contractor has to post, the supplier must give notice as provided in 18-2-206 (subsection (2) of section (1) of the bill). The notice must be in writing and delivered personally or sent by certified mail to the public body that contracted for the work, to the prime contractor, and to the licensed surety company that issued the bond.

PROPOSERS: Lloyd "Sonny" Lockrem, Montana Contractors Association, gave a scenario of why SB 360 was introduced. He explained a case that was appealed to the Supreme Court regarding this problem in Roundup in 1985. He pointed out that during the interim there was a committee to study lien laws. They sat in on those hearings and had hoped that these notification problems could be solved. That legislation, however, dealt only with real property, five-plexes and under. The full obligation to pay every person or firm that supplies all the subcontractors on a project rests with the general contractor. He said that is existing law and that would remain. What they hoped to do with SB 360 is identify the exposure of second and third tier exposure. He urged the support of SB 360.

OPPOSERS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 360: Questions were called for from the committee members.

Sen. Thayer remarked that he had served on the interim committee

and it was their decision that the contractors were already well aware of the lien laws and that that was available to them. He asked Mr. Lockrem if he felt the bond was still necessary. Mr. Lockrem replied that in the case of filing a lien against a state building, which can be done, but that lien can never be satisfied because the building can't be sold, that bond is necessary.

Sen. Bishop said the bill that had previously been in the Senate was a completely different situation as this bill refers to the bond and the other bill just refers to the notice and the recording of the notice. He said they would like to exclude the portion regarding the name on the pickup or an invoice, etc., as being notice that they supplied materials and they had actual knowledge. He asked that Ms. McCue take a look at this bill, however, he pointed out they were under a time constraint. They just want to make sure that all notices possible are given so somebody isn't stuck because of these "secret" liens.

Ms. McCue said that is the purpose of requiring this notice - she did think it would be very good to have this language in the bill to make it absolutely clear that they have to go through this process before they could go against the bond. That would be a very simple amendment and could be done in the committee without slowing down the progress of the bill.

Mr. Lockrem said they would greatly appreciate the addition of the amendment if the committee has the time.

There being no further questions, Sen. Bishop closed on SB 360.

CONSIDERATION OF SENATE BILL NO. 336: Sen. Dick Manning, Senate District 18, Great Falls, sponsor, said the bill would revise video draw poker machine law to allow only local bodies to license the machines. Presently, the state licenses each machine at a fee of \$1,500 per machine. The state would continue to have the duty to certify that a machine meets the machine specifications of 23-5-606 (section 3 of the bill). The license fee charged by the locality would be determined on the basis of population (section 7). He said the bill also needs a technical amendment in the title to remove the reference to bingo machines.

PROPOSERS: Bob Durkee, Montana Tavern Association, said they endorse SB 336 as many of their smaller establishments have been unable to have even one poker machine because of the license fee and they hoped that this bill would relieve that situation. He said in the original poker machine act a lot of the revenue was dependent upon the licensing of 5,000 machines but the state has never achieved that goal in two years. He said the maximum number of machines at the present time is about 3900 and as a result of that the estimated income for both state and local

whole fee schedule on a percentage basis and if that should pass, that would solve the problem as it would equalize out the fees and would be much more fair. Sen. Neuman agreed with the statement of Sen. Thayer and said this approach would exclude the state forever of getting a part of the gambling proceeds from these machines. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 360: Sen. Thayer asked that Ms. McCue draft the amendment as discussed, agreed to by Sen. Meyer. Ms. McCue stated the following amendment: "Any other notice, whether constructive or actual, would not be sufficient to allow the supplier to go against the bond." Sen. Thayer MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Thayer MOVED SB 360 DO PASS AS AMENDED, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad being present, stated he had a telephone call from the Department of SRS informing him they would be receiving some communication from the Federal Department of Health and Human Services in Denver in regard to SB 205, the pharmacy voucher bill.

RECONSIDERATION OF SENATE BILL NO. 210: Sen. Neuman stated that apparently when the bill was passed out of committee they didn't amend all the proper sections. Sen. Neuman asked Ms. McCue to explain what the problems were. She stated that in the bill they repeal a section of the codes and that section was mentioned in numerous other places and when a section is repealed it has to be deleted where that statute is referred to and that was not caught during the drafting process. These would be technical amendments, she said.

Sen. Thayer MOVED RECONSIDERATION OF SB 210, MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad MOVED ADOPTION OF THE TECHNICAL AMENDMENTS, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad MOVED SB 210 DO PASS AS AMENDED, seconded by Sen. Meyer. The MOTION CARRIED with Sen. Neuman voting "no".

DISPOSITION OF SENATE BILL NO. 272: Sen. Neuman pointed out the proposed amendments by Sen. Lynch. Sen. Neuman explained the change in amount the non-profit organization could make from \$5 million to \$1 million before they would be subject to tax. The other amendment was to change the Class 3 railroad to the Interstate Commerce definition. Sen. Kolstad said the total mileage being looked at in this situation was 30 miles, as he recalled, or about 12.2 acres per mile so the tax was very insignificant.

Sen. Kolstad said that first of all, before it could qualify

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION 1987

Date 2/19/88

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

COMMITTEE ON

DATE

2/19/87

Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jim Rowe	Personnel Systems Inc.	341	✓	
Steve Whitney	Personnel Systems	341	✓	
Dorothy Rowe	Personnel Systems Inc.	341	✓	
Sally Nelson	CAREERS UNLIMITED	341	✓	
Bert Durkin	MTA	293	✓	
Mike Lanning	LABOR + INDUSTRY	341		
Bob Fletcher	Cannery Lounge	298		
Charles Hopper	Midco-A Way Farms	298	✓	
Harry E. Burke	Mint Bar	293	✓	
Ken Buckley	East Sub Bar	293	✓	
W. W. L. L. L.	M.T.I.	293		
Fred VAN Vlietburg	Seneca Dist. 30	341	✓	
Larry M. L. L.	Log Cabin/Kalispell Bar	293	✓	
Larry M. L. L.	Log Cabin/Kalispell Bar	374		
Devin L. L. L.	Rose Room			
Michael Waters	Mint Assoc. of Churches	SB 379 HB 374		✓
Lloyd Lockman	Mint - Cent. Ass.	SB 360	✓	
Alamy Nee	MPA	SB 341	X	
Doris Dowdy	Lottery	NB 374	X	
Joe L. L. L.	Sig	HB 374	X	
Roger Kaufman	Career Concepts	341	✓	
Patricia M. L. L.	BILLINGS MINT ASSOCIATION			

STANDING COMMITTEE REPORT

February 19, 1937

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration SENATE BILL No. 360

1st reading copy (white)
color

NOTICE REQUIREMENTS FOR PUBLIC CONSTRUCTION SUPPLIER ON RIGHT AGAINST BOND

Respectfully report as follows: That SENATE BILL No. 360

be amended as follows:

1. Page 2, following line 19.

Insert: "(3) To have a right of action against the contractor and his bond under this part, a person, firm, or corporation must give the written notice required by this section in substantially this form. Any other type of actual or constructive notice is not sufficient."

Renumber: subsequent subsection

AND AS AMENDED,

DO PASS

DO NOT PASS

SENATOR NEUMAN, Vice-Chairman.

both to the licensure part and to the certificate of need which sunsets, and the temporary definitions delete all the definitions that were in the section.

CLOSING

Senator Weeding stated it seemed the bill would have an amount of amendments, which are not substantive but are important to the areas.

Chairman Kitselman referred this bill to a subcommittee composed of Reps. Wallin, Brandewie, and Hansen, with Rep. Wallin as chairman.

SENATE BILL NO. 360 - Notice Requirements For Public Construction Supplier on Right Against Bond, sponsored by Senator Al Bishop, Senate District No. 46, Billings. Sen. Bishop stated this bill revises the notice requirements concerning a supplier's right of action on a bond under a public construction contract. He said the contractor gets a public contract from a city, county, or school district, and they post a surety bond, and give the bond to the entity to ensure that the contract is performed and that all people who work on the project and the materials are paid.

PROPOSERS

Lloyd "Sonny" Lockrem, representing Montana Contractors Association. Mr. Lockrem submitted a scenario that makes this bill necessary. Exhibit No. 12. He said this bill does not relieve the contractor from any obligation to pay any person, firm, or corporation doing any work on the project. He commented what it does do is require those people to file a certified letter, identify themselves, particularly on the second and third tier liens, and on that basis they keep the obligation to pay.

Irv Dillinger, representing Montana Building Material Dealers Association and the Montana Home Builders Association. Mr. Dillinger stated they do not have any problems with the bill and highly support it.

OPPOSERS

None.

QUESTIONS

Rep. Glaser stated the problem that subcontractors and material suppliers have at this particular time is determining who the surety company is, and asked Mr. Lockrem how

they could find out. Mr. Lockrem responded that they were working with public contracts as opposed to private and with a sophisticated clientele, and that information is more readily available in the public contract area than in the private work where a legal description of the property is needed.

Mr. Lockrem stated he is sorry to hear there is such a lack of cooperation from the general contractors and the architects and engineers, but within their Association, they have liaison committees with the Montana Tech Council and their general contracting firms, and he will see that some kind of dialog and cooperation exist between the architects, engineers, and the general contractor.

Senator Bishop stated that the bonding requirements provide that a copy of such bond shall be filed with the County Clerk and Recorder.

CLOSING

Senator Bishop stated that the case that Mr. Lockrem cited was what precipitated this legislation.

SENATE BILL 210 - Defining Professional Counselors As Health Care Providers, sponsored by Senator Thomas Keating, Senate District No. 44, Billings. Sen. Tom Keating stated this bill addresses third party payments under the law and includes professional counselors' services in the definition of medical assistance established for Medicaid, and defines professional counselors as health care providers for purposes of disability insurance and health service corporation plans.

PROPOSERS

Ted Doney, representing Montana Mental Health Counselors Association. Mr. Doney stated that there are currently 61 licensed counselors. He said the drafting of the bill is intended to reflect the same coverage that is now being provided for social workers, and the bill mirrors the current law for social workers. He added the amendments made in the Senate were technical in nature to ensure that the sections referred to were covered in the act.

Joan Rebich, representing Mental Health Counselors Association. Ms. Rebich submitted written testimony. Exhibit No. 13.

Dwight Leonard, representing Helena Comprehensive Guidance Clinic. Mr. Leonard stated that this bill would provide services to rural areas, the developmental disabled, and the

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
299	2/24/87	3/13/87	3/13/87					3/13/87			
313	2/24/87	3/13/87	3/13/87							3/13/87	
314	2/24/87	3/13/87	tabled 3/13/87								
315	3/3/87	3/9/87	3/26/87							3/26/87	
318	2/23/87	3/18/87	3/18/87					3/18/87			
319	2/24/87	3/13/87	tabled 3/13/87								
328	3/3/87	3/10/87	3/26/87							3/26/87	
341	3/3/87	3/10/87	3/20/87							3/20/87	
353	3/13/87	3/20/87	3/26/87							3/26/87	
359	3/3/87	3/18/87	3/18/87							3/18/87	
360	3/3/87	3/18/87	3/20/87					3/20/87			
364	3/03/87	3/11/87	3/11/87					3/11/87			
371	3/13/87	3/20/87	3/26/87							3/26/87	
374	2/24/87	3/17/87	3/17/87					3/17/87			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	l		
REP. FRED THOMAS, VICE-CHAIRMAN	l		
REP. BOB BACHINI	l		
REP. RAY BRANDEWIE	l		
REP. JAN BROWN	l		
REP. BEN COHEN	l		
REP. JERRY DRISCOLL	l		
REP. WILLIAM GLASER	l		
REP. LARRY GRINDE	l		
REP. STELLA JEAN HANSEN	l		
REP. TOM JONES	l		
REP. LLOYD MCCORMICK	l		
REP. GERALD NISBET	l		
REP. BOB PAVLOVICH	l		
REP. BRUCE SIMON	l		
REP. CLYDE SMITH	l		
REP. CHARLES SWYSGOOD			✓
REP. NORM WALLIN	l		

Sonny Locum
MCA

STATE REPORTER
Box 749
Helena, Montana 59624

3/12/87
3887
3360

VOLUME 42

No. 85-175

ROBINTECH, INC.,

Plaintiff and Respondent,

Submitted: Aug. 15, 1985

Decided: Nov. 6, 1985

WHITE & MCNEIL EXCAVATING, INC.,
and TRANSAMERICA INSURANCE CO.,

Defendants and Appellants.

CONTRACTS--JUDGMENT, SUMMARY, Appeal by prime contractor and its surety on a public works project from summary judgment in favor of plaintiff, a materialman and supplier to a subcontractor. The Supreme Court held: (1) Defendants, as prime contractors, were bonded to assure payment to their materialman under the public works bonding provisions, and (2) Defendants had adequate legal notice on Plaintiff's claim and Plaintiff was entitled to payment under the contract and under the bonding statutes.

Appeal from the Fourteenth Judicial District Court, Musselshell County, Hon. Roy Rodighiero, Judge

For Appellant: Landoe, Brown, Planalp & Kommers; James M. Kommers,
Bozeman

For Respondent: Jardine, Stephenson, Blewett & Weaver; William D.
Jacobsen, Great Falls

Submitted on briefs.

Opinion By Chief Justice Turnage; Justices Harrison, Weber, Hunt and Gulbrandsen concur.

Affirmed.

Mont.

709e.2d 631

Robintech, Inc., Plaintiff and Respondent, v.
White & McNeil Excavating, Inc., Defendants and Appellants
42 St.Rep. 1690

Mr. Chief Justice Turnage delivered the Opinion of the Court.

Defendants, prime contractor and its surety on a public works project, appeal summary judgment in favor of plaintiff, a materialman and supplier to a subcontractor, entered in the Fourteenth Judicial District, Musselshell County, on December 28, 1984. The District Court determined that as a matter of law plaintiff was entitled to summary judgment in the amount of \$47,639, plus interest at 6 percent and costs.

We affirm. We hold that White & McNeil Excavating, Inc., as the prime contractor, was bonded by Transamerica Insurance Company to assure payment to its materialman, Robintech, under the public works bonding provisions in Part Two of Title 18, Chapter 2, MCA. We hold that White & McNeil had adequate legal notice on Robintech's claim, and Robintech was entitled to payment under the contract and under the bonding statutes.

Both parties moved for summary judgment claiming that the material facts were undisputed. For its first issue on appeal, White & McNeil challenges the court's conclusion that Robintech was a supplier or a materialman to a subcontractor, alleging that Waterworks Supplies Company was a materialman and not a subcontractor. Therefore, appellant urges this Court, Robintech supplied a materialman and is not protected by the bond. For its second issue, appellant alleges error in the court's ruling that Robintech complied with Section 18-2-206, MCA, by mailing invoices but failing to send notice by certified mail of any claim upon the bond.

The facts material to the summary judgment follow. On June 9, 1982, the City of Roundup, Montana, entered into a public works contract with White & McNeil Excavating, Inc., for the construction of water main improvements to be incorporated into the city water system. White & McNeil, prime contractors on the project, executed a payment bond with co-defendant Transamerica Insurance Company as surety.

The payment bond contained the following language:

"NOW, THE AGREE, if the PRINCIPAL shall promptly make payment to all PERSONS, PARTS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, [emphasis added.]"

A further provision limited the claimants entitled to coverage:

"PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS."

The general contract defined a "subcontractor" as "an individual,

Robintech, Inc., Plaintiff and Respondent, v.
White & McNeil Excavating, Inc., Defendants and Appellants
42 St.Rep. 1690

firm or corporation having a contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of the WORK at the site." "Work" was defined in the contract as "[a]ll labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT." (Emphasis added.)

White & McNeil contracted with Waterworks Supplies Company as the sole direct supplier of pipe and all materials for the project, and Waterworks in turn contracted with Robintech to provide the pipe. Steve McNeil testified at his deposition that he knew when they "were quoted the job, that it was Robintech pipe." Robintech shipped its pipe directly to the project and a representative of White & McNeil signed for the pipe as consignee. The packing lists and receipts bore the Robintech letterhead. Before the project completion, Betty White, secretary of the prime contractor, realized that Waterworks was not paying for the Robintech pipe, so she withheld payments to Waterworks.

The City Council of Roundup met and approved final payment to White & McNeil on or about August 3, 1982. On August 30, 1982, Robintech mailed a notice to the City of its claim against the bond executed between White & McNeil and Transamerica on the project, pursuant to notice requirements for a right of action, Section 18-2-204, MCA. Defendants admitted that copies of this notice were mailed to them the next day, August 31, 1982.

I

Appellant contends that Waterworks Supplies was a materialman, not a subcontractor, to White & McNeil, and that Robintech supplied one who was not a subcontractor. Arguing that Robintech did not have a direct contract with the principal or a subcontractor, appellant claims that Robintech did not qualify for protection under the limiting provision.

There is no merit in appellant's contentions. Waterworks had a contract with the principal, White & McNeil, to provide materials, and Robintech had a contract with Waterworks to provide pipe. Robintech was not excluded by the limiting provision as well as the general bond. Robintech was protected under the bonding statutes for subcontractors, Section 18-2-201, et seq., as a materialman performing work for the prosecution of work under the contract.

Finally, appellant incorrectly argues that Waterworks was only a supplier and not a subcontractor, apparently from a misconception that a subcontractor must perform labor at its work site. White & McNeil contracted with Waterworks to provide all its pipe for the public works project, knowing that the pipe would be supplied by Robintech. Under the general contract, work encompassed both labor and materials being added into the project. Waterworks was clearly a subcontractor on the project. The bond assured payment to a corporation having a direct contract with a subcontractor. Robintech had such a contract and qualified under the limiting provision of the law. Therefore, the prime contractor or its surety was liable for payment.

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Second, Robintech is entitled to claim on the bond under Montana's public works bonding statutes, Section 18-2-201 et seq., MCA, provided that it gave adequate legal notice under Section 18-2-206, MCA.

"Bonding requirements. (1) Whenever . . . any public body shall contract with any person or corporation to do any work for the . . . city, . . . such . . . body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such . . . body a good and sufficient bond with . . . a licensed surety company as surety, conditioned that such corporation, person, or persons shall:"

"(a) faithfully perform all of the provisions of such contract;

"(b) pay all laborers, mechanics, subcontractors, and materialmen;
and

"(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work." [Section 18-2-201, MCA. Emphasis added.]

By statute, the bond assures payment to materialmen and persons supplying the corporation or subcontractor with material. Regardless of its contract with Waterworks, Robintech supplied White & McNeil which benefitted in fulfilling its contractual promise. When the City of Roundup accepted the project as completed, it acknowledged that all of the provisions of the contract were performed, including the installation of the Robintech pipe. Robintech supplied the corporation of White & McNeil the material for the project, White & McNeil knowingly received the benefit, and its surety company, Transamerica, has guaranteed payment.

II

In claiming failure to comply with the notice required under Section 18-2-206, the appellant makes an argument of form over substance, also made in *Treasure State Industries v. Leigland* (1982), 187 Mont. 268, 443 P.2d 22. Appellant argues that Robintech was only entitled to proceed with the project if it had strictly complied with the provisions of Section 18-2-201 concerning subcontractor under Section 18-2-206, MCA, sending a certified letter within thirty days to the subcontractor, which is a separate requirement from Section 18-2-204, MCA. We have held that statutory notice was waived and the notice provisions were satisfied if the prime contractor had actual knowledge that materials were being furnished for the project by a particular subcontractor and consented thereto. *Treasure State Industries v. Leigland* (1982), 187 Mont. 268, 297, 443 P.2d 22, 27. To require more notice from White & McNeil had from the beginning in contract discussions and practically from direct shipments and packing lists and receipts would, as in *Treasure State*, "be to require an idle act and to defeat its claim on this ground would deny it justice." *Treasure State*, 443 P.2d at 27.

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We find appellant's argument particularly strained in requiring all or nothing notice by certified mail, otherwise foreclosing respondent's claim. Section 18-2-206(1), MCA, provides that every person, firm or corporation furnishing materials to be used in the work for the [city] shall "deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that [it has provided materials] with the name of the subcontractor or agent ordering or to whom the same is furnished and [the contractor or his bond will be held for the same]." (Emphasis added.) The accompanying packing lists and receipts were written notice stating in substance that Robintech provided materials, and White & McNeil's duty under the provisions of this part to its materialmen sufficed to hold the contractor and his bond liable to pay. Robintech provided the materials to White & McNeil for its project, qualifying under the bonding statute, Section 18-2-201, MCA. We therefore conclude that the requirements for notice in *Treasure State Industries v. Leigland*, supra, are satisfied.

Affirmed.

BUSINESS AND LABOR

BILL NO. SENATE BILL NO. 360

SPONSOR SENATOR AL BISHOP

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

CS-33

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 20, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 20, 1987 at 8:00 a.m. in room 312-F of the state capitol.

ROLL CALL: All members were present.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 250

Rep. Thomas moved that Senate Bill No. 250 BE CONCURRED IN. The motion carried unanimously.

Rep. Spaeth will carry the bill in the House.

ACTION ON SENATE BILL NO. 341

Rep. Brandewie moved that Senate Bill No. 341 BE CONCURRED IN.

Rep. Thomas moved the amendments to Senate Bill No. 341. The motion carried unanimously.

Rep. Brandewie moved that Senate Bill No. 341 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Rep. Simon will sponsor the bill in the House.

ACTION ON SENATE BILL NO. 298

Rep. Hansen moved that Senate Bill No. 298 BE CONCURRED IN.

Rep. Hansen moved the amendments to Senate Bill No. 298. The motion carried with 8 opposed.

Rep. Cohen moved that Senate Bill No. 298 BE TABLED. The motion failed 11 to 7.

Rep. Driscoll moved that Senate Bill 298 BE CONCURRED IN AS AMENDED. The motion carried.

Rep. Bardanouve will sponsor the bill in the House.

ACTION ON SENATE BILL NO. 360

Rep. Glaser moved that Senate Bill No. 360 BE CONCURRED IN. The motion passed unanimously.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

MARCH 20

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 360

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. LES KITSelman

Chairman

Rep. Spaeth will sponsor

THIRD

BLUE

reading copy ()
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